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OFFICE OF PETITIONS

In re Application of  
Jorasch, et al.  
Application No. 09/597,801  
Filed: June 20, 2000  
Attorney Docket No. 00-032

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 C.F.R. §1.137(a)," filed May 23, 2002, which is properly considered as a petition to withdraw the holding of abandonment pursuant to §1.8(b)<sup>1</sup>.

The petition under §1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed November 7, 2001. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action, with extensions of time obtainable pursuant to 37 C.F.R. §1.136(a). No reply having been received and no extension of time made of record, the above-identified application became abandoned effective February 8, 2002. This decision precedes the mailing of a Notice of Abandonment.

Petitioner promptly filed the instant petition (and petition fee under §1.137(a)), asserting that a transmittal letter and response were timely filed on February 7, 2002. In support thereof, petitioner submitted a copy of the printout regularly updated and utilized in tracking actions throughout the prosecution history of applicant's patent applications, purportedly indicating that the action was timely filed; and a copy of their return receipt postcard, which was stamped by USPTO, purportedly confirming that the above-referenced documentation was received on February 25, 2002. In addition, petitioner submitted copies of the transmittal letter and

<sup>1</sup> (b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned ..., the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

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response as petitioner maintains they were filed on February 7, 2002.

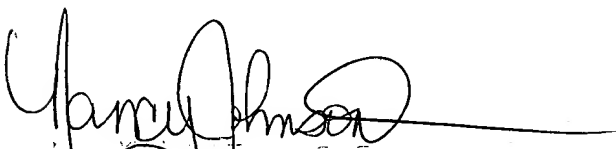
Petitioner's evidence has been considered, and it has been determined that withdrawal of the holding of abandonment pursuant to §1.8(b) is warranted. Petitioner's evidence shows that the correspondence was timely filed pursuant to §1.8(a). The instant petition was promptly filed. The response bears a proper certificate of mailing under 37 C.F.R. §1.8(a), executed by Veronika Leliever and certifying timely mailing on February 7, 2002. On petition, attorney Downs attests to the previous timely mailing.

In view thereof, the response is considered timely filed, and the holding of abandoned is hereby **WITHDRAWN**.

Since consideration of the petition under §1.137(a) is unnecessary for the reasons cited, the petition fee will not be charged to Deposit Account No. 50-0271, as authorized.

The application file is being forwarded to Technology Center 3713 for consideration of the amendment resubmitted May 23, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.



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Office of the Deputy Commissioner  
for Patent Examination Policy